IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 69 of 2004.

Date of decision: 27.12.2005.

Satpal ... Appellant

Versus

Onkar Singh & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. N.K. Thakur, Advocate.

For the respondents: Mr. Sanjeev Kuthiala, Advocate, for respondents No. 1 to 3. .

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the defendant – appellant against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiffs was decreed by the trial Court and the appeal filed by Satpal Singh, defendant, was dismissed by the learned District Judge.

The facts which are relevant for the decision of the present appeal are that Onkar Singh etc., plaintiffs, had filed a suit for declaration and permanent injunction against the defendants, with the allegations that the plaintiffs were owner in possession of the suit property to the extent of their shares and that the revenue entries to the

[1]Whether reporters of Local Papers may be allowed to see the judgment?

contrary were wrong and illegal and the defendants be restrained from interfering in the possession of the plaintiffs over the suit land. It was alleged that Kashmir Singh, defendant No.2, had sold the suit land in favour of the plaintiffs vide registered sale deed dated 21.12.1978 on his own behalf as well as on behalf of other defendants No. 3 and 4, namely Raj Devi and Shanti Devi as the Attorney. It was alleged that the plaintiffs had purchased the suit property for consideration and they were put in possession thereof and mutation was also sanctioned in favour of the plaintiffs. It was alleged that after the aforesaid sale, defendants No. 2 to 4 ceased to have any right in the suit land. It was further alleged that strangely enough, Kashmir Singh, defendant, again executed sale deed in respect of the suit land in favour of defendant No.1 Satpal Singh on 19.1.1979 in an illegal manner. It was alleged that said sale was illegal and void because neither defendant No.2 nor defendants No.3 and 4 were competent to execute the sale deed in favour of defendant No.1, as they had already sold the suit land to the plaintiffs. It was alleged that mutation in favour of the plaintiffs was illegally reviewed and the suit land was illegally mutated in the name of defendant No.1 without any authority of law.

The suit was contested by defendant No. 1 Satpal Singh by filing written statement taking up various preliminary objections. On merits, it was denied that defendants No. 2 to 4 had sold the suit land to the plaintiffs or that the plaintiffs were put in possession of the suit land. It was alleged that the land in question was purchased by defendant No.1 without any notice of the rights of the plaintiffs and as such, defendant No.1 had acquired valid title in the same.

After hearing both sides and perusing the record, the learned trial Court decreed the suit of the plaintiffs, holding that the plaintiffs were owners in possession of the suit land to the extent of share of the vendors and that the revenue entries to the contrary were illegal and void and the defendants were restrained from interfering in the possession of the plaintiffs over the suit land, holding that the plaintiffs were owners in possession of the suit land, on the basis of the sale deed dated 21.12.1978 and that the subsequent sale deed dated 21.1.1979 in favour of defendant No.1 was null and void. The appeal filed by defendant No.1 was dismissed by the learned District Judge, upholding the findings of the trial Court. Aggrieved against the same, defendant No.1 filed the present Regular Second Appeal in this Court.

Notice was ordered to be issued to the plaintiffs – respondents and the records were also requisitioned.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this appeal and the same is liable to be dismissed. As referred to above, the plaintiffs were claiming their ownership and possession over the suit land by virtue of the sale deed dated 21.12.1978 executed by defendant No.2 Kashmir Singh on his own behalf and on behalf of defendants No. 3 and 4 as their Attorney in favour of the plaintiffs. So far as defendant – appellant Satpal Singh is concerned, he was claiming his ownership and possession over the suit property on the basis of the subsequent sale deed dated 21.1.1979 allegedly executed by defendant No.2 Kashmir Singh on his own behalf and on behalf of defendants No. 3 and 4 as their Attorney. Admittedly, the sale deed dated 21.1.1979 in favour of defendant – appellant Satpal Singh is subsequent to the sale deed dated 21.12.1978, which was executed by

defendant No.2 Kashmir Singh on his own behalf and on behalf of defendants No. 3 and 4 as their Attorney in favour of the plaintiffs. Defendants No. 2 to 4 having already sold the suit property in favour of the plaintiffs by virtue of the sale deed dated 21.12.1978, in my opinion, were left with no right, title or interest in the suit property and as such, they could not have sold the suit property again in favour of defendant – appellant Satpal Singh by virtue of the subsequent sale deed dated 21.1.1979. It is not the case of the defendant – appellant that the land sold in favour of the plaintiffs by virtue of sale deed dated 21.12.1978 was different than the land sold in favour of defendant No.1 by virtue of subsequent sale deed dated 21.1.1979. On the other hand, from the evidence available on the record, it was proved that defendant No.2 Kashmir Singh on his own behalf and on behalf of defendants No. 3 and 4 as their Attorney had sold their entire share in the suit property in favour in favour of the plaintiffs by virtue of sale deed dated 21.12.1978 and as such, defendants No. 2 to 4 were left with no share in the suit property and thus they could not have sold their share in the suit property in favour of defendant – appellant Satpal Singh by virtue of subsequent sale deed dated 21.1.1979. After considering the entire evidence led by the parties, it was found by the learned District Judge that when the sale deed dated 21.12.1978 was validly executed by defendants No. 2 to 4 in favour of the plaintiffs, defendants No. 2 to 4 were left with no interest in the suit property so as to convey the suit property further by execution of the sale deed dated 19.1.1979 in favour of defendant No.1, observing that a person could not pass a better title than what he had. In view of the said finding of the learned District Judge, which is finding of fact, based on evidence, in my opinion, the defendant – appellant could not be allowed

to urge that he had become owner in possession of the suit property by virtue of the sale deed dated 19.1.1979, especially when at the time when defendants No. 2 to 4 had sold suit property in favour of defendant No.1, defendants No. 2 to 4 were left with no interest in the suit property and could not have conveyed title in favour of defendant No.1 in respect of the suit property since defendants No. 2 to 4 had already sold the suit property in favour of the plaintiffs by virtue of the earlier sale deed dated 21.12.1978. In my opinion, both the Courts below had rightly decreed the suit of the plaintiffs and no fault could be found with the same. That being so, in my opinion, the present appeal filed by defendant No.1 is liable to be dismissed, especially when no question of law, much less a substantial question of law, arises for determination in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

CMP No. 109 of 2004:

In view of the dismissal of the main appeal, this application also stands disposed of.

(V.M. Jain),
Judge

December 27, 2005
(BSS)